

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

SIR GIORGIO SANFORD CLARDY,

Case No. 6:18-cv-02175-CL
ORDER

Plaintiff,

v.

TRACIE MCFARLANE, *et al.*,

Defendants.

AIKEN, District Judge:

Magistrate Judge Mark Clarke filed his Findings and Recommendation (“F&R”) (doc. 9) recommending that this case be dismissed without prejudice for Plaintiff’s failure to pay the filing fee as required under 28 U.S.C. § 1915(g). Plaintiff then timely filed objections to the F&R (doc. 11). The matter is now before me. *See* 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b). When either party objects to any portion of a magistrate judge’s F&R, the district court must make a de novo determination of that portion of the magistrate judge’s report. *See* 28 U.S.C. §

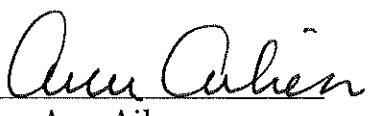
636(b)(1); *McDonnell Douglas Corp. v. Commodore Business Machines, Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981), cert denied, 455 U.S. 920 (1982).

Plaintiff is an inmate at the Oregon State Penitentiary and filed this action pursuant to 42 U.S.C. § 1983 and applied to proceed in forma pauperis (IFP). Plaintiff's application was denied and he was ordered to pay the full filing fee because he has "on three or more prior occasions, while incarcerated or detained in any facility, brought an action in a court of the United States that was dismissed on the grounds that it was frivolous, malicious, or failed to state a claim upon which relief may be granted." 28 U.S.C. § 1915(g). An exception exists for prisoners who are under imminent danger of serious physical injury. *See id.* Plaintiff failed to pay the fee and argues that he is under such imminent danger. I recently adopted Judge Clarke's F&R in a similar case where Plaintiff was claiming an imminent threat to physical bodily injury to avoid paying the filing fee, *see Clardy v. Byerly, et al.*, Case No. 6:18-cv-01200-CL (doc. 10), and this case is no different. As Judge Clarke explained in his F&R, Plaintiff's conclusory allegations with respect to events that occurred two years ago do not plausibly allege that he is under "imminent danger of serious physical injury."

Based on my review of the F&R and the documents in the case, I find no error in Judge Clarke's F&R and Plaintiff's objections do not undermine Judge Clarke's analysis. Thus, I adopt the F&R (doc. 9) in its entirety. Accordingly, this case is DISMISSED without prejudice because Plaintiff has not submitted the filing fee as required under 28 U.S.C. § 1915(g).

IT IS SO ORDERED.

Dated this 14 day of June, 2019.



Ann Aiken
United States District Judge